

U.S. Senate Republican Policy Committee
Larry E. Craig, Chairman Jade West, Staff Director
Legislative Notice

No. 63

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S. 2507 – Intelligence Authorization Act for FY 2001

Calendar No. 528

Reported as an original bill from the Select Committee on Intelligence on May 4, 2000 by a unanimous vote of 11-0, S. Rept. 106-279.

NOTEWORTHY

- S. 2507 authorizes appropriations for Fiscal Year 2001 for U.S. intelligence activities and programs, the Central Intelligence Agency (CIA) Retirement and Disability System, and the Community Management Account of the Director of Central Intelligence (DCI).
- As a result of serious deficiencies relating to the protection of classified information at the Department of State, the bill requires the Director of Central Intelligence (DCI) to certify to Congress that the State Department is fully complying with applicable Executive Orders and DCI Directives in the handling of Sensitive Compartmented Information (SCI). If the DCI cannot certify full compliance, the bill places restrictions on funding and on information retention for the affected State Department bureau.
- In response to the mishandling of classified information by former DCI John Deutch, the bill broadens congressional notification requirements by the CIA Inspector General (IG) to include not only the Director or Acting Director, but also former DCIs, other officials confirmed by the Senate, and other senior officials. Further, the IG is required to notify congressional intelligence oversight committees whenever one of these officials is the subject of a criminal referral to the Justice Department.
- The bill fills a gap in existing law by giving the Justice Department authority to protect *all* classified information from unauthorized disclosure. It creates a basis in law for prosecuting the knowing and willful unauthorized disclosure of information to an unauthorized person and provides penalties.
- The House passed its version, H.R. 4392, on May 23 by a voice vote.

BACKGROUND

The Senate Select Committee on Intelligence conducted a detailed review of the FY 2001 budget requests for the National Foreign Intelligence Program (NFIP) of the DCI; the Joint Military Intelligence Program (JMIP) of the Deputy Secretary of Defense; and the Tactical Intelligence and Related Activities (TIARA) of the military services. The Committee's review entailed a series of briefings and hearings with senior intelligence officials, numerous staff briefings, review of the budget justification materials, and numerous written responses provided by the Intelligence Community to specific questions posed by the Committee. The Committee also monitored compliance with numerous reporting requirements contained in statute. Each report was scrutinized by the Committee and appropriate action was taken when necessary.

In accordance with a Memorandum of Agreement with the Senate Armed Services Committee (SASC), the Committee is including its recommendations on both JMIP and TIARA in its public report and classified annex. The Senate Select Committee on Intelligence (SSCI) has agreed that JMIP and TIARA issues will continue to be authorized in the defense authorization bill.

In addition to its annual review of the Administration's budget request, the Intelligence Committee performs continuing oversight of various intelligence activities and programs, including in-depth audits and review of specific programs and activities. Some of the reviews recently focused on were: the National Imagery and Mapping Agency (NIMA); counter-intelligence at the Department of Energy's National Laboratories; and the mishandling of classified information by former Director of Central Intelligence (DCI) John Deutch.

In 1997, the Committee established a Technical Advisory Group (TAG) to inform and advise members of the threats and opportunities presented by the extraordinary technological advances of recent years. The TAG has studied signals intelligence (SIGINT), human intelligence (HUMINT), and measurement and signature (MASINT), and imagery intelligence (IMINT), and their recommendations and conclusions have influenced the provisions in this bill.

The majority of the Committee's specific recommendations relating to the Administration's budget request for intelligence and intelligence-related activities are classified and are contained in the classified Schedule of Authorizations and the classified annex. The Committee is intent upon making its concerns over, and priorities for, intelligence programs and activities public to the greatest extent possible consistent with the nation's security.

HIGHLIGHTS

The report highlights the Committee's priority issues. Those issues that are not discussed in the Bill Provisions section of this Legislative Notice are described below.

Rebuilding the National Security Agency (NSA)

The Committee is increasingly troubled by the National Security Agency's (NSA) growing inability to meet technological challenges and to provide America's leaders with vital signals intelligence (SIGINT).

Historically, the NSA has led the way in development and use of cutting-edge technology that has kept the United States a step ahead of hostile interests. However, in recent years the Clinton-Gore Administration has failed to invest in the infrastructure and organizational changes required to keep pace with the revolutionary developments in the global telecommunications system.

In 1998 and 2000, the TAG reviewed NSA's operations, and its conclusions are "disturbing." Specifically, according to the TAG report, while the current information revolution presents both opportunities and threats to its mission, the NSA's ability to adapt to the changing environment is in serious doubt. The two TAG reports identified serious deficiencies resulting from the sustained budget decline of the past decade. This year's TAG report, however, sounded a note of optimism based on an aggressive and ambitious modernization effort initiated by the Director of the NSA in November of 1999. Further, the TAG recommended new business practices, coupled with additional resources, to begin the difficult transition necessary for NSA to regain its position of excellence in both offensive and defensive signals intelligence.

However, despite the need for additional resources, the Committee does not believe that money alone will solve the NSA's problems and notes that organizational change also is essential. Stating that rebuilding the NSA is a top priority, the Committee pledges to take whatever steps are necessary to ensure America's return to supremacy in the increasingly vital signals intelligence field.

Tasking, Processing, Exploitation, and Dissemination Funding Shortfall

The Committee long has been concerned that intelligence collection continues to outstrip analysis and is troubled that funding for the latter remains woefully inadequate. Such funding shortfalls challenge the Intelligence Community's ability to manage the tasking, processing, exploitation, and dissemination (TPED) of intelligence collected by satellites, airplanes, unmanned aerial vehicles, and other platforms and sensors. The issue of TPED is at the heart of the issue of collecting raw intelligence data, and then in timely manner turning it into a product that is understandable and usable to a wide variety of consumers.

In June of 1999, the National Imagery and Mapping Agency (NIMA) issued a congressionally-mandated report describing the challenges and projected shortfalls in the areas of TPED, and identified three phases of modernization. However, the Committee concludes that Phase One of the modernization plan is woefully underfunded in the FY 2001-2005 budget. Further, the Committee is troubled by the Administration's unwillingness to recognize the significant disparity between its proposed funding plan and the TPED modernization plan. Therefore, the Committee recommends a number of funding changes within the NIMA budget to bolster Phase One TPED modernization efforts in FY 2001. These funding changes are described in the classified annex to this Report.

Counterintelligence – CI 21

The Committee has become increasingly concerned about the ability of existing U.S. counterintelligence structures, programs, and policies to address both emerging threats and traditional adversaries using cutting-edge technologies and tradecraft in the 21st Century. The Committee has made its views known to the nation's senior intelligence and counterintelligence officials and found many of them share these concerns. This year, the DCI, FBI Director and the Deputy Secretary of Defense unveiled a proposed, "Counterintelligence for the 21st Century" (CI 21), which restates and expands upon other recent assessments on the emerging counterintelligence environment.

CI 21 highlights not only traditional espionage efforts by noted adversaries but also non-state actors that pose an increasing counterintelligence threat (terrorist groups, organized crime, and drug cartels), and found current U.S. counterintelligence capabilities intended to confront this expanding and changing threat to be "piecemeal and parochial." To address these shortfalls, the CI 21 report recommends adoption of a new counterintelligence philosophy and a restructured national counterintelligence system. The Committee commends the work of those involved with developing the CI 21 plan, notes that it has not yet received final interagency approval, and strongly urges the agencies involved to reach agreement.

Counterintelligence – Department of Energy

Following its extensive 1999 review of Department of Energy (DoE) security and counterintelligence problems, the Committee continues its oversight of the Department's Counterintelligence and Intelligence programs. While acknowledging that DoE's problems are deeply rooted and will not be solved overnight, the Committee is disappointed that after an initial counterintelligence inspection, only one weapons lab received a "satisfactory" rating.

The Committee also is concerned that, to date, neither the DoE, the Director of Counterintelligence, the DCI, nor the FBI Director, has been able to certify to Congress certain requirements regarding the foreign visitors program at any of the national labs. This condition reinforces the need for continued vigorous executive leadership at the Energy Department, together with aggressive congressional oversight, to ensure that the current momentum for reform is maintained.

Counterterrorism

The Committee continues to be extremely concerned by the threat posed to our nation's security and to the lives of Americans here and around the world by international terrorism. The Committee is further concerned that, in addition to traditional weapons such as hijacking and car bombs, terrorists' attacks are ever more likely to include chemical, biological, radiological, and nuclear weapons. The Committee pledges to work to ensure that the Intelligence Community's efforts to fight international terrorism are well funded. Further, because the Committee is concerned about repeated leaks of classified intelligence, language in the bill directs the DCI to provide a report, no later than December 1, 2000, describing any and all known leaks since January 1, 1998, that may have made the U.S. counterterrorist efforts more difficult.

Counterproliferation and Arms Control

The Committee acknowledges the classified reports and briefings on proliferation provided to it and its staff; however, the Committee also highlights a number of issues that warrant comprehensive assessments. In some cases, the publication of unclassified separate reports are required. The Committee directs the DCI to provide:

- No later than October 1 of 2000, a comprehensive report detailing available information regarding Russian and Chinese cooperation with Iranian missile programs and their transfer of sensitive technologies to Iran;
- An update to the National Intelligence Estimate (NIE) on biological weapons capabilities and an unclassified version of the NIE no later than October 1, 2000.
- An all-source, comprehensive report, no later than December 1, 2000, covering the history and status of all North Korean chemical, biological, radiological, and nuclear programs and North Korean missile programs.
- No later than December 1, 2000, a report on the Intelligence Community's ability to monitor follow-on agreements to the Strategic Arms Reduction Treaty, the ABM Treaty and the Biological and Toxin Weapons Convention, currently under discussion or negotiation. Key areas of uncertainty and resource requirements for monitoring should be addressed.

Other reports required deal with possible Iraqi misuse of the Oil for Food Program funds, and a recommendation for a consolidated analysis of theater and cruise missile production to help assist developers of U.S. theater ballistic and cruise missile defense programs.

Export Control

The Committee remains concerned with exports of sensitive technologies and the effect of these transfers on the capability of the Intelligence Community to collect information regarding critical threats to our nation. In recent years, the development and widespread usage of advanced computing and telecommunications systems has brought technologies previously limited to governments and militaries into the world marketplace. Many of these technologies

may be used by U.S. adversaries to thwart our ability to collect intelligence critical to our national security.

Therefore, the Committee will continue to review modifications to export regulations and proposed statutory changes to existing export laws to ensure such changes do not adversely affect intelligence and national security interests.

BILL PROVISIONS

Title I – Intelligence Activities

- This title authorizes appropriations for FY 2001 for intelligence and intelligence-related activities of the U.S. Government. The details of the amounts authorized are contained in a classified Schedule of Authorizations.
- This title also authorizes personnel ceilings of the Intelligence Community.

Title II – CIA Retirement and Disability System

- A total of \$216 million is authorized for this fund.

Title III – General Provisions

Prohibition of Unauthorized Disclosure of Classified Information

- Section 303 fills a gap in existing law by giving the Justice Department new authority to protect *all* classified information from unauthorized disclosure. Specifically, Section 303 creates a basis in law for prosecuting the knowing and willful disclosure of classified information to a person not authorized to receive that information. The penalty for such disclosure could include a fine up to \$10,000 and three years imprisonment.

POW/MIA Analytic Capability in the Intelligence Community

- Section 304 requires the DCI to establish and maintain a POW/MIA analytic capability within the Intelligence Community to support U.S. intelligence activities relating to prisoners of war and missing persons since 1990. Currently, no standing analytic capability exists.

Limitation of Handling, Retention, and Storage of Certain Classified Materials by the State Department

- The Committee report cites serious deficiencies in policies, procedures, and attitudes relating to the protection of classified information at the State Department. The loss of this information endangers intelligence sources and methods directed at one of our most critical intelligence targets and is considered a matter of “urgent concern.”
- Given the lax control over intelligence materials, the Committee directed the State Department IG to review and report on its policy and procedures for handling classified information. The resulting IG report found that the Department of State “is substantially *not* in compliance with the DCIDs [Director of Central Intelligence Directives] that govern the handling of SCI [Sensitive Compartmented Information]” [emphasis in original].
- The Committee believes that the time has come for the State Department to be held accountable for its failure to comply with directives governing the protection of SCI. Therefore, the Committee adopted Section 306, which requires the DCI to certify to Congress that each element of the State Department that handles, retains, or stores materials classified at the SCI level is in full compliance with all applicable DCI directives or Executive Orders regarding such materials.
- No funds authorized for the State Department’s Bureau of Intelligence and Research can be obligated or expended until the DCI has certified each covered element is in full compliance with the directives or orders. Further, only those elements that are in full compliance may contain or store SCI material.

Counterdrug Intelligence Plan

- Section 308 waives two existing prohibitions and authorizes Executive branch agencies to contribute appropriated funds for the purpose of supporting the Counterdrug Intelligence Executive Secretariat established by the President’s General Counterdrug Intelligence Plan.

Title IV – Central Intelligence Agency

Expansion of Inspector General Actions Requiring a Report to Congress

- The Committee was deeply concerned to learn of serious breaches of security by former DCI John M. Deutch, stating its view, based upon the Committee’s inquiry to date, that Mr. Deutch “displayed a shocking and reckless disregard for the most basic security practices required of thousands of government employees throughout the CIA and other agencies of the Intelligence Community” [S. Rept. 106-279, p. 9].

- Therefore, the bill includes a new section (401) that closes gaps in the reporting requirements to Congress' intelligence oversight committees revealed by the Committee's inquiry into Deutch's mishandling of classified information. Current law requires the Inspector General "immediately" to notify the intelligence oversight committees only if the Director or Acting Director is the subject of an inquiry. This amendment broadens the notification requirement to include former DCIs, as well as all confirmed, and other named senior officials.
- Further, this section requires congressional notification whenever one of the designated officials above is the subject of a criminal referral to the Justice Department.
- The report notes that additional proposals for statutory changes are being reviewed by the Committee, which may make further recommendations when its unclassified report regarding the Deutch incident is complete.

Title V – Department of Defense Intelligence Activities

Nuclear Test Monitoring Equipment

- Section 502 supports the Intelligence Community's effort to monitor nuclear weapons tests on a worldwide basis by authorizing the Defense Department to convey nuclear test monitoring equipment to a foreign government through a bilateral agreement which provides the United States the right to install, inspect, and maintain such equipment, and to have timely access to data collected. Sharing such equipment with an international organization, as requested by the Administration, is prohibited under this section.

COST

Pursuant to paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the estimated costs incurred in carrying out the provisions of this Bill, for FY 2001, are set forth in the classified annex to this Bill.

POSSIBLE AMENDMENTS

There were no known amendments at press time.

ADMINISTRATION POSITION

The Statement of Administration Policy was unavailable at press time.

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